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Critical Analysis of Divorce by Mutual Consent

MEHAK MAHAPATRA¹ AND PRINCESS PREET KAUR KALRA²

ABSTRACT

A marriage could be understood as a legal sanctity that leads to the union of two souls. It is a responsibility undertaken by the spouses to attain happiness and perform the societal obligations. The same is widely known as a sacrament and sometimes as a civil contract between the parties. Even though there exist some discrepancies regarding the perspective of marriage among people, the common objective of the same, being fulfilment of obligations, remains the same. For situations where it becomes impossible for the parties to fulfil these obligations or stay in the marriage, different grounds have been set up by the courts in India in order to bring a marriage to an end, divorce by mutual consent being one of them. Mutual consent as a method of dissolving a marriage is one of the most civil ways to end a marriage. Upon realisation that the wife and the husband can not live together, they can mutually agree to dissolve the marriage with the help of this provision. Divorce by mutual consent could be found under different legislations in India i.e, The Hindu marriage act, 1955, the Special Marriage Act, 1954, the Dissolution of Marriage Act, 1939, The Muslim Women Protection of Rights on Divorce Act, 1986, the Parsi Marriage and Divorce Act, 1936, and the Divorce Act, 1869. The author in the present paper strives to explain to its readers the concept of dissolution of marriage by mutual consent pertaining to the Hindu law and the Muslim law. The paper has further laid down the various essentials of divorce by mutual consent and exceptions to those essentials under Hindu Law.

Keywords: Mutual Consent, Divorce, Hindu law, Muslim law.

I. INTRODUCTION

The meaning of the term marriage has been changed through ages and differs from the ideologies of one person to another³. In simple terms, a marriage is a legal sanctity or a binding contract that brings together two parties, i.e., two people or two families.⁴ Even though the

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³Barbara A. Atwood, *Marital Contracts and the Meaning of Marriage*, 54 ARIZ. L. REV. 11 (2012).

⁴Sharma I, Pandit B, Pathak A, Sharma R, *Hinduism, marriage and mental illness*, 55 Indian J Psychiatry 243 (2013).

notion of marriage is the same all over the country, the method of solemnising the same is vastly different compared to each other. Various acts have been laid down for the legalisation of the same in the country, keeping in mind their religious beliefs, norms, and etcetera.⁵ It is sanctioned by the state and could be separated only by the same, by going through the process of divorce. Any right or any mutual obligation that the parties had towards each other, comes to an end with divorce. Divorce is the legal discontinuance of a marriage.⁶ Different grounds have been set up by the courts in India in order to bring a marriage to an end for the appeasement of the parties. One of the grounds is Divorce by mutual consent. Various legislations i.e., the Hindu marriage act,⁷ The Indian Christian Marriage Act⁸, Special Marriage Act⁹ and etc, exists in India that has provisions regarding marriage and divorce. Section 13B of the Hindu Marriage Act, 1955¹⁰, covers the area pertaining to dissolution of marriage by mutual consent. This particular method of dissolving a marriage did not exist in the original Hindu marriage act and was embedded into it by the Marriage Law Amendment Act, 1976.¹¹ Section 28 of the Special marriage act, 1954¹², has similar provisioning regarding divorce compared to section 13B of the HMA¹³. Dissolution of marriage through mutual agreement under Muslim law is in the form of Khula and Mubarat.¹⁴

II. WHAT IS MUTUAL CONSENT?

One of the most sophisticated and decorous methods to dissolve a marriage is divorce by mutual consent.¹⁵ Upon realisation that the wife and the husband can not live together, they can mutually agree to dissolve the marriage with the help of this provision.¹⁶ As compared to the other methods of divorce, mutual consent is a lot easier for the both the parties, and a lot less complicated in litigation. It only requires consent to end the marriage, from both the parties, and if convinced, the court can even decrease the time of this process.¹⁷ This concept of mutual consent could be found in various statutes in India.

⁵Terree McGovern, *Modern Matrimonial Matters in India*, 70 WOMEN LAW. J. 18 (1984).

⁶ *Divorce*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003).

⁷ The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1993).

⁸ The Indian Christian Marriage Act, No. 15 of 1872, INDIA CODE (1993).

⁹ The Special Marriage Act, No. 43 of 1954, INDIA CODE (1993).

¹⁰ The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1993), § 13B.

¹¹ The Marriage Law Amendment Act, No. 209 of 1976, INDIA CODE (1993).

¹² The Special Marriage Act, No. 43 of 1954, INDIA CODE (1993), § 28.

¹³ *Supra* note 8, at 1.

¹⁴ Katherine Lemons, *Sharia Courts and Muslim Personal Law in India: Intersecting Legal Regimes*, 52 LAW & Soc'y REV. 603 (2018).

¹⁵ Anil Malhotra & Ranjit Malhotra, *Marriage and Divorce - Complete Constitutional Justice*, 2015 INT'L Surv. FAM. L. 121 (2015).

¹⁶ Sampak P. Garg, *Law and Religion: The Divorce Systems of India*, 6 TULSA J. COMP. & INT'L L. 1 (1998).

¹⁷ *Amit Jain v. Taruna Jain*, (2007) 147 PLR 114.

(A) Statutes governing divorce by Mutual Consent

Dissolution of marriage through means of mutual consent could be found under different acts in India. The application of act depends upon the specific act under which a couple got married. For instance, if the marriage took place in accordance with the Hindu Marriage Act, 1955¹⁸, the dissolution shall take place as per the divorce regulations of the same act. The same goes for the Special Marriage Act, 1954¹⁹ as well. Marriages solemnized as per the Muslim law, can seek for divorce with the help of their own personal laws pertaining to divorce. They can also dissolve their marriage as per the Dissolution of Marriage Act, 1939²⁰ and The Muslim Women Protection of Rights on Divorce Act, 1986²¹. In the same way, the Parsi Marriage and Divorce Act, 1936²², governs the rights of dissolution of marriage of Parsis. Rest of the divorces take place pertaining to the laws of the Divorce Act, 1869²³.

III. DISSOLUTION OF MARRIAGE BY MUTUAL CONSENT UNDER HINDU LAW

Section 13B of HMA 1955²⁴, provides a method for dissolving a marriage by mutual consent. This provision was not included in the original act but was annexed under the HMA 1955²⁵, by the Marriage Law Amendment Act, 1976.²⁶ As per this provision, the parties can seek for divorce by mutual consent in scenarios, where both the parties have been living separately for one year and can not live together and further have mutually agreed for divorce. Further, this provision is retrospective in nature²⁷, which states that all parties can make use of this provision irrespective of whether the solemnization of marriage took place before or after the 1976 amendment.²⁸ Section 13B i.e, the concept of divorce by mutual consent was interpreted for the first time in the case of *Leela Mahadeo Joshi v. Mahadeo Sitaram Joshi*²⁹, by the Bombay High Court.³⁰

Section 13B(1) of the HMA, 1955 reads:

“Subject to the provisions of this Act a petition for dissolution of marriage by a decree of

¹⁸ *Supra* note 6, at 1.

¹⁹ *Supra* note 8, at 1.

²⁰ The Dissolution of Muslim Marriage Act, No. 8 of 1939, INDIA CODE (1993).

²¹ The Muslim Women Protection of Rights on Divorce Act, No. 25 of 1986, INDIA CODE (1993).

²² The Parsi Marriage and Divorce Act, No. 3 of 1936, INDIA CODE (1993).

²³ The Divorce Act, No. 4 of 1869, INDIA CODE (1993).

²⁴ *Supra* note 9, at 1.

²⁵ *Supra* note 6, at 1.

²⁶ *Supra* note 10, at 1.

²⁷ Anil Malhotra & Ranjit Malhotra, *Divorce Nullity and Related Matters under the Hindu Marriage Act 1955*, 2005 INT'l Surv. FAM. L. 275 (2005).

²⁸ *Supra* note 10, at 1.

²⁹ *Leela Mahadeo Joshi v. Mahadeo Sitaram Joshi*, AIR 1991 Bom 105.

³⁰ *Supra* note 14, at 2.

divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.”³¹

(A) Essentials of divorce by Mutual Consent?

The following must be met in order to dissolve a marriage by mutual consent under HMA³²:

- The parties have been living separately for a minimum timespan of one year.
- The parties are not able to live together.
- The parties have mutually agreed upon dissolving the marriage.

IV. LIVING SEPARATELY

As mentioned under Section 13(B) of the HMA³³, to be granted a divorce by means of mutual consent, the parties must be living separately for about a minimum period of one year. It is pertinent to note here, that the said period of one year, wherein the parties are required to live separately, must take place immediately prior to such filing of petition. It is also important to comprehend the meaning behind “living separately”. The term as per the section 13B³⁴, is not limited to the implication that the parties must reside in different houses. It also includes scenarios, where the parties might be living under the same roof but there exists a distance amid the spouses. In the leading judgement of *Sureshta Devi v. Om Prakash*, the Supreme Court of India stated, “The period of living separately for one year must be immediately preceding the presentation of petition. The expression living separately connotes not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof by way of circumstances, and yet they may not be living as husband and wife. What seems to be important is that they have no desire to perform marital obligations and with that they have been living separately for a period of one year immediately preceding the presentation of the petition.”³⁵

1. Is it Mandatory for the parties to live together for a period of one year?

As per the provisions laid down in Section 13B of the HMA³⁶, it is mandatory for the parties

³¹The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1993), § 13B, cl. 1.

³² *Supra* note 6, at 1.

³³ *Supra* note 9, at 1.

³⁴ *Supra* note 9, at 1.

³⁵ *Sureshta Devi v. Om Prakash*, AIR 1992 SC 1904.

³⁶ *Supra* note 9, at 1.

to have lived together for a minimum period of one year. But, conditions for exemption from this period were laid down in the case of *Sweety E.M v. Sunil Kumar*, by the Karnataka High Court. As per this case, “the relevant considerations for exemption of the period of 1 year are:

- Maturity and comprehension of spouses,
- Absence of coercion/intimidation/undue influence,
- Duration of marriage
- Absence of the possibility of reconciliation
- Lack of frivolity
- Lack of misrepresentation or concealment
- Age of spouses and the deleterious effect of continuation of sterile marriage on the prospects of remarriage.”³⁷

Further, in *Priya v. Sanjay Gaba*³⁸, the couple was left with a timespan of two months in order to complete the mandatory period of one year. Here, the husband was set to relocate abroad and a new groom was arranged for the wife. As there was no chance for the couple to stay married and waiting would not have helped them in any way, the two months needed to complete the one year mandatory period was waived off. Even though the appeal was dismissed in the trial court, the same was granted by the High Court.

2. Not able to live together

Most of the time, when neither of the spouses are happy with their marriage, and even after taking help of mediation and reconciliation, and trying every other means that might help save the marriage³⁹, if resolving or staying together does not seem as a viable option, parties file for divorce by means of mutual consent. After making certain whether the first essential has been fulfilled wherein the parties have lived separately, the second essential that the parties can not live together has to be proved.

It was observed in *Sureshta Devi v. Om Prakash*⁴⁰, that the meaning behind “have not been able to live together” depicts a broken down marriage wherein there is no hope of reconciliation amid the spouses.

In *Pradeep Pant & anr v. Govt of NCT Delhi*⁴¹, a married couple who had a daughter, were not

³⁷ *Sweety E.M. v. Sunil Kumar*, AIR 2008 Kant 1.

³⁸ *Priya v. Sanjay Gaba*, 109 (2004) DLT 825.

³⁹ Jana Douglas, Kirk Eby & Mikaela Feng, *Marriage and Divorce*, 17 GEO. J. GENDER & L. 325 (2016).

⁴⁰ *Sureshta Devi v. Om Prakash*, AIR 1992 SC 1904.

⁴¹ *Pradeep Pant & anr v. Govt of NCT Delhi*, 2012 SCC OnLine Del 2436.

able to live together and decided to live separately because of the temperamental opinions and dissimilarities of the parties. Even after making use of all necessary help, the parties could not imagine themselves staying together as a couple and filed for divorce by mutual consent. Since there was free consent of both the parties and the court was satisfied that there existed no scope for reconciliation, a decree of divorce was passed.

Further, it should also be noted that it is crucial to determine and establish, that the consent of either of the spouses were not taken through any means of force, fraud and undue influence.⁴²

Once the petition has been filed for dissolution of marriage by mutual consent, a waiting period of six months is provided to the parties that could be extended to eighteen months only.⁴³ This time is given to the parties, to give them a chance to judge and rethink about their decision of divorce.⁴⁴ If, even after the said period, the parties find it impossible to live together, the district judge passes the petition for divorce.

3. Is a six months period mandatory?

Section 13B (2) of HMA states:

“On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”⁴⁵

The time period of six to eighteen months, that is mentioned under section 13B of HMA⁴⁶, is a suspension gap given to the parties with intention to grant the parties some time and a chance to think about their situation. Within this interregnum period, both the parties or any one of them might incur second thoughts.⁴⁷

Different views could be inferred from the judgements regarding if the courts must, as per section 13B (2)⁴⁸, abide by the mandatory waiting period of six months. It was held in Grandhi Venkata Chitti Abbai, “If Section 13-B (2) is read as mandatory, the very purpose of liberalizing the policy of decree of divorce by mutual consent will be frustrated more so when

⁴² Vennangot Anuradha Samir v. Vennangot Mohandas Samir, 2015 SCC OnLine SC 1266.

⁴³ Rupa Ashok Hurra v. Ashok Hurra and Ors., AIR 2002 SC 1771.

⁴⁴ Hitesh Bhatnagar v. Deepa Bhatnagar, AIR 2011 SC 1637.

⁴⁵ The Hindu Marriage Act, No. 25 of 1955, INDIA CODE (1993), § 13B, cl. 2.

⁴⁶ *Supra* note 9, at 1.

⁴⁷ Suman v. Surendra Kumar, AIR 2003 Raj 155.

⁴⁸ *Supra* note 44, at 6.

the parties started living separately for a considerable time.”⁴⁹ Therefore, even though Section 13B (2) of HMA⁵⁰ is considered to be mandatory in nature, it relies on the discretion of the court. A similar judgement was passed in *Dinesh Kumar Shukla v. Neeta*⁵¹, where it was observed by the court that the waiting period of six months was not mandatory and could be reduced considering dire amount of efforts had been made by the parties to reconcile. In addition to that, the requirements laid down under section 13B (1)⁵² must also be fulfilled.

A contradictory judgment was given in *Hitesh Doshi v. Jesal Hitesh Joshi*, that said “the provision has a definite purpose and object, i.e. giving time to the parties for introspection and reconciliation. That purpose and object stares at us so clearly by the language expressed in s 13-B (2) of the Act robbing away the right of the court from considering the petition earlier than six months.”⁵³

The judgement in *Rupa Ashok Hurra v. Ashok Hurra*, stated “in exercise of its extraordinary powers under Article 142 of the Constitution, the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in s. 13-B of the Act. This doctrine of irretrievable break-down of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution.”⁵⁴

This extraordinary power to waive off the six months mandatory waiting period, is available only to the Supreme Court as per article 142 of the Indian Constitution.⁵⁵ SC can eliminate the process of waiting period in cases where there exists no scope of reconciliation of the parties. The Civil courts and High Courts do not have the power to grant divorce prior to the time period mentioned in the respective provisions of the HMA⁵⁶, or on any ground that is not mentioned under Section 13 and 13B.⁵⁷

V. MUTUAL AGREEMENT

During the waiting period, some parties might decide to live together and give a second chance to their marriage. Once the first motion is granted, the parties have a minimum period of six months to a maximum period of eighteen months to reconcile and save their marriage before

⁴⁹ Grandhi Venkata Chitti Abbai and Ors., AIR 1999 AP 91.

⁵⁰ *Supra* note 44, at 6.

⁵¹ *Dinesh Kumar Shukla v. Neeta*, AIR 2005 MP 106.

⁵² *Supra* note 30, at 3.

⁵³ *Hitesh Doshi v. Jesal Hitesh Joshi*, AIR 2000 AP 364.

⁵⁴ *Rupa Ashok Hurra v. Ashok Hurra and Ors.*, AIR 2002 SC 1771.

⁵⁵ INDIA. CONSTI. art 142.

⁵⁶ *Supra* note 6, at 1.

⁵⁷ *Swapnil Verma v. Principle Judge, Family Court, Lucknow*, AIR 2015 Allahabad 153.

filing for the second motion. If, there occurs a situation, where the parties have failed to file for a second motion within those eighteen months, the parties are considered to have revoked their mutual consent for divorce.⁵⁸

(A) Can consent be unilaterally withdrawn?

In order to get a divorce under section 13B of the HMA⁵⁹, there has to be a mutual agreement of the parties for the same. The conundrum here is whether one of the parties could withdraw their consent to dissolve the marriage without the consent of the other party.

It was observed in *Jayashree Ramesh Londhe v. Ramesh Bhikaji*⁶⁰, that after a divorce petition has been filed with mutual consent of the parties, the same could not be withdrawn in the absence of consent given by both the parties. In a similar case, *Harcharan Kaur v. Nachhattar Singh*, the court held that, “If both the parties had voluntarily consented to file the petition for dissolving the marriage by mutual consent and all other conditions mentioned in sub-section (1) of section 13-B of the Act are fulfilled, it will not be open to a party to withdraw the consent.”⁶¹

Contrary to that, the court allowed the withdrawal of consent unilaterally in the leading case of *Sureshta Devi v. Om Prakash*. Further, if one of the parties withdraws their consent for dissolving their marriage, the court shall not be in a position to pass a decree for divorce. The case observed “if the decree is solely based on the initial petition it negates the whole idea of mutuality and consent for divorce. Mutual consent to divorce is sine qua non for passing a decree for divorce under Section 13-B. Mutual consent should continue till the divorce decree is passed.”⁶²

Having mentioned the suitable outcomes, it was held in the SC case of *Anil Kumar Jain v. Maya Jain*, that “Under the existing laws, the consent given by the parties at the time of filing of the joint petition for divorce by mutual consent has to subsist till the second stage when the petition comes up for orders and a decree for divorce is finally passed and it is only the Supreme Court, which, in exercise of its extraordinary powers under Article 142 of the Constitution, can pass orders to do complete justice to the parties.”⁶³

The judgement given in the case of *Sureshta Devi*, stays valid and parties are allowed to unilaterally remove their consent. But in special scenarios, the Supreme Court with the power

⁵⁸ Arpit Garg v. Ayushi Jaiswal, (2019) 136 ALR 524.

⁵⁹ *Supra* note 9, at 1.

⁶⁰ *Jayashree Ramesh Londhe v. Ramesh Bhikaji*, AIR 1984 Bom 302.

⁶¹ *Harcharan Kaur v. Nachhattar Singh*, AIR 1988 P&H 27.

⁶² *Sureshta Devi v. Om Prakash*, AIR 1992 SC 1904.

⁶³ *Anil Kumar Jain v. Maya Jain*, AIR 2010 SC 229.

bestowed upon it by article 142 of the Constitution⁶⁴, can give divorce notwithstanding whether any of the parties have withdrawn their consent at any point of the process under the subordinate court and before the decree has been passed.

VI. DIVORCE BY MUTUAL AGREEMENT UNDER MUSLIM LAW

The idea of dissolving a marriage through mutual consent was introduced in the Muslim law after the implementation of Dissolution of Muslim Marriage Act, 1939.⁶⁵ Subsequently, a divorce can take place with the existence of mutual consent from both the spouses under the Muslim law.⁶⁶ There is no requirement of prior agreement and the husband does not have to delegate any authority while dissolving a marriage by means of mutual consent.⁶⁷ The dissolution of marriage could occur during any time when both the parties realise that it is not possible to live together with affection and love as described by God. The concept of mutual consent for dissolution of marriage, is a unique characteristic of the Muslim Law.⁶⁸ There exists two forms for dissolving a marriage by means of mutual consent under the Muslim Law- Khula and Mubarat.

(A) Khula

Under this form, the wife is needed to pay her dower or some other property to the husband, as compensation for dissolving the marriage.⁶⁹ Even though this consideration is deemed to be necessary under Khula, this parting of dower or some property is not a precedent that would help determine the validity of Khula.⁷⁰ If the husband consents to dissolve the marriage, it constitutes irrevocable divorce.⁷¹ After which, the husband has no authority to question the “khul” on the basis that no compensation was made by the wife. Here, usually the whole or a part of “mahr” is given back as compensation, but it is not limited to that and could be anything.⁷²

Requisites for a Valid Khula

⁶⁴ *Supra* note 54, at 7.

⁶⁵ *Supra* note 19, at 2.

⁶⁶ Vrinda Narain, *Women's Rights and the Accommodation of Difference: Muslim Women in India*, 8 S. CAL. REV. L. & WOMEN'S Stud. 43 (1998).

⁶⁷ *Id.*

⁶⁸ Vinaya Saijwani, *Personal Laws of Divorce in India with a Comment on Chaudry v. Chaudry*, 11 WOMEN'S Rts. L. REP. 41 (1989).

⁶⁹ *Id.*

⁷⁰ *Supra* note 13, at 2.

⁷¹ *Supra* note 67, at 8.

⁷² *Supra* note 15, at 2.

1. Both the parties must be competent i.e of sound mind and should have reached the age of puberty.
2. Consent obtained must be free: the offer of Khula, and the acquisition of the same, should be made voluntarily.
3. Formality: The offer of Khula must be made by the wife, and the same should be accepted by the husband. There is no particular way of how the offer should be made and accepted. It could be done orally or in writing. But both should be done in a single sitting.
4. Compensation: in order to dissolve the marriage, the wife as a compensation must pay the husband. This payment could be done in the form of money or property.

As per the Shia law, the husband does not have the power to revoke divorce after it has been accepted. Although, the wife can reclaim consideration in the iddat period.⁷³

(B) Mubarat

Under this method, both the parties have equal power and are consenting to end the marriage.⁷⁴ Consequently, under Mubarat, the offer to dissolve the marriage can be made by either of the spouses and the other spouse should accept the offer.⁷⁵ Therefore, it makes no difference who takes the lead in this situation. One of the most crucial aspects of Mubarat is that both husband and the wife have mutual interest to dissolve the marriage, therefore, neither of them is bound to pay any amount of money or property as compensation to the other party.⁷⁶ The provisions of Mubarat as per the Muslim law is similar to the provisions of Section 13B of Hindu Marriage Act⁷⁷, 1955 and Section 28 of Special Marriage Act, 1954⁷⁸.

Requisites for a Valid Mubarat:

1. Both the parties must be competent i.e of sound mind and should have reached the age of puberty.
2. Consent obtained must be free: the offer of Mubarat, and the acquisition of the same, should be made voluntarily.
3. Formality: The offer of Mubarat can be made by either of the spouses, and the same should be accepted by either of them. There is no particular way of how the offer should

⁷³ Rao, N., *Marriage Agreements Under Muslim Law - A Weapon In The Hands Of Muslim Women*, 55(1) JILI (2013).

⁷⁴ Sabah Adnan Sami Khan v. Adnan Sami Khan, AIR 2010 Bom 109.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Supra* note 8, at 1.

⁷⁸ *Supra* note 10, at 1.

be made and accepted. It could be done orally or in writing. But both should be done in a single sitting.

4. Compensation: in order to dissolve the marriage, the wife as a compensation does not need to pay anything to the husband since there is no requirement of consideration.

VII. CONCLUSION

The meaning of the term marriage has been changed through ages and differs from the ideologies of one person to another. A marriage could be understood as a legal sanctity which leads to the union of two souls.⁷⁹ It is a responsibility undertaken by the spouses to attain happiness and perform the societal obligations. Even though the notion of marriage is the same all over the country, the method of solemnising the same is vastly different compared to each other. Similarly, the method of dissolving a marriage is different compared to each other.

Divorce is the legal discontinuance of a marriage.⁸⁰ Various grounds have been set up in India in order to bring a marriage to an end for the appeasement of the parties. Dissolving a marriage by means of mutual consent is one such ground which could be found in various legislations of India. Divorce by mutual consent or the concept of no fault divorce in general, is comparatively a new and important addition to the jurisprudential basis of divorce. Divorce by means of fault theory or ground based litigation may incur a lot of money and is also very time consuming. Further, it entails a lot of arguments, which adds to the tension between the two sides. Mutual consent theory is one of the most sophisticated and civil ways to dissolve a marriage and is made use of in civil and common law countries. The application of act depends upon the specific act under which a couple got married. This particular paper has covered the theory of mutual consent in Hindu law and Muslim law.

⁷⁹ Koppiseti Subbharao v. State of A.P., AIR 2009 SC 2684.

⁸⁰ *Divorce*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003).